

## Introduced by Senator Ackerman

February 23, 2001

An act to amend Sections 2924c and 2924d of the Civil Code, relating to real property.

## LEGISLATIVE COUNSEL'S DIGEST

SB 958, as introduced, Ackerman. Mortgages: deeds of trust.

Existing law limits specified trustee's or attorney's fees in connection with certain procedures required upon default in payment of obligations under a mortgage or deed of trust to a specified maximum amount with respect to any portion of the unpaid principal sum secured that is \$50,000 or less, plus additional incremental allowable percentages of the principal sum over that amount.

This bill would delete the specified maximum amount of such a fee with respect to the portion of the unpaid principal sum secured that is \$50,000 or less and substitute an unspecified amount.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2924c of the Civil Code is amended to  
2 read:  
3 2924c. (a) (1) Whenever all or a portion of the principal sum  
4 of any obligation secured by deed of trust or mortgage on real  
5 property or an estate for years therein hereafter executed has, prior  
6 to the maturity date fixed in that obligation, become due or been  
7 declared due by reason of default in payment of interest or of any  
8 installment of principal, or by reason of failure of trustor or

1 mortgagor to pay, in accordance with the terms of that obligation  
2 or of the deed of trust or mortgage, taxes, assessments, premiums  
3 for insurance, or advances made by beneficiary or mortgagee in  
4 accordance with the terms of that obligation or of the deed of trust  
5 or mortgage, the trustor or mortgagor or his or her successor in  
6 interest in the mortgaged or trust property or any part thereof, or  
7 any beneficiary under a subordinate deed of trust or any other  
8 person having a subordinate lien or encumbrance of record  
9 thereon, at any time within the period specified in subdivision (e),  
10 if the power of sale therein is to be exercised, or, otherwise at any  
11 time prior to entry of the decree of foreclosure, may pay to the  
12 beneficiary or the mortgagee or their successors in interest,  
13 respectively, the entire amount due, at the time payment is  
14 tendered, with respect to (A) all amounts of principal, interest,  
15 taxes, assessments, insurance premiums, or advances actually  
16 known by the beneficiary to be, and that are, in default and shown  
17 in the notice of default, under the terms of the deed of trust or  
18 mortgage and the obligation secured thereby, (B) all amounts in  
19 default on recurring obligations not shown in the notice of default,  
20 and (C) all reasonable costs and expenses, subject to subdivision  
21 (c), which are actually incurred in enforcing the terms of the  
22 obligation, deed of trust, or mortgage, and trustee's or attorney's  
23 fees, subject to subdivision (d), other than the portion of principal  
24 as would not then be due had no default occurred, and thereby cure  
25 the default theretofore existing, and thereupon, all proceedings  
26 theretofore had or instituted shall be dismissed or discontinued and  
27 the obligation and deed of trust or mortgage shall be reinstated and  
28 shall be and remain in force and effect, the same as if the  
29 acceleration had not occurred. This section does not apply to bonds  
30 or other evidences of indebtedness authorized or permitted to be  
31 issued by the Commissioner of Corporations or made by a public  
32 utility subject to the Public Utilities Code. For the purposes of this  
33 subdivision, the term "recurring obligation" means all amounts of  
34 principal and interest on the loan, or rents, subject to the deed of  
35 trust or mortgage in default due after the notice of default is  
36 recorded; all amounts of principal and interest or rents advanced  
37 on senior liens or leaseholds which are advanced after the  
38 recordation of the notice of default; and payments of taxes,  
39 assessments, and hazard insurance advanced after recordation of  
40 the notice of default. Where the beneficiary or mortgagee has



1 made no advances on defaults which would constitute recurring  
2 obligations, the beneficiary or mortgagee may require the trustor  
3 or mortgagor to provide reliable written evidence that the amounts  
4 have been paid prior to reinstatement.

5 (2) If the trustor, mortgagor, or other person authorized to cure  
6 the default pursuant to this subdivision does cure the default, the  
7 beneficiary or mortgagee or the agent for the beneficiary or  
8 mortgagee shall, within 21 days following the reinstatement,  
9 execute and deliver to the trustee a notice of rescission which  
10 rescinds the declaration of default and demand for sale and advises  
11 the trustee of the date of reinstatement. The trustee shall cause the  
12 notice of rescission to be recorded within 30 days of receipt of the  
13 notice of rescission and of all allowable fees and costs.

14 No charge, except for the recording fee, shall be made against  
15 the trustor or mortgagor for the execution and recordation of the  
16 notice which rescinds the declaration of default and demand for  
17 sale.

18 (b) (1) The notice, of any default described in this section,  
19 recorded pursuant to Section 2924, and mailed to any person  
20 pursuant to Section 2924b, shall begin with the following  
21 statement, printed or typed thereon:

22  
23 “IMPORTANT NOTICE [14-point boldface type if printed or  
24 in capital letters if typed]  
25

26 IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE  
27 YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD  
28 WITHOUT ANY COURT ACTION, [14-point boldface type if  
29 printed or in capital letters if typed] and you may have the legal  
30 right to bring your account in good standing by paying all of your  
31 past due payments plus permitted costs and expenses within the  
32 time permitted by law for reinstatement of your account, which is  
33 normally five business days prior to the date set for the sale of your  
34 property. No sale date may be set until three months from the date  
35 this notice of default may be recorded (which date of recordation  
36 appears on this notice).  
37

38 This amount is \_\_\_\_\_ as of \_\_\_\_\_  
39 (Date)

1 and will increase until your account becomes current.

2  
3 While your property is in foreclosure, you still must pay other  
4 obligations (such as insurance and taxes) required by your note and  
5 deed of trust or mortgage. If you fail to make future payments on  
6 the loan, pay taxes on the property, provide insurance on the  
7 property, or pay other obligations as required in the note and deed  
8 of trust or mortgage, the beneficiary or mortgagee may insist that  
9 you do so in order to reinstate your account in good standing. In  
10 addition, the beneficiary or mortgagee may require as a condition  
11 to reinstatement that you provide reliable written evidence that  
12 you paid all senior liens, property taxes, and hazard insurance  
13 premiums.

14 Upon your written request, the beneficiary or mortgagee will  
15 give you a written itemization of the entire amount you must pay.  
16 You may not have to pay the entire unpaid portion of your account,  
17 even though full payment was demanded, but you must pay all  
18 amounts in default at the time payment is made. However, you and  
19 your beneficiary or mortgagee may mutually agree in writing prior  
20 to the time the notice of sale is posted (which may not be earlier  
21 than the end of the three-month period stated above) to, among  
22 other things, (1) provide additional time in which to cure the  
23 default by transfer of the property or otherwise; or (2) establish a  
24 schedule of payments in order to cure your default; or both (1) and  
25 (2).

26 Following the expiration of the time period referred to in the  
27 first paragraph of this notice, unless the obligation being  
28 foreclosed upon or a separate written agreement between you and  
29 your creditor permits a longer period, you have only the legal right  
30 to stop the sale of your property by paying the entire amount  
31 demanded by your creditor.

32 To find out the amount you must pay, or to arrange for payment  
33 to stop the foreclosure, or if your property is in foreclosure for any  
34 other reason, contact:



(Name of beneficiary or mortgagee)

(Mailing address)

(Telephone)

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.** [14-point boldface type if printed or in capital letters if typed]”

Unless otherwise specified, the notice, if printed, shall appear in at least 12-point boldface type.

If the obligation secured by the deed of trust or mortgage is a contract or agreement described in paragraph (1) or (4) of subdivision (a) of Section 1632, the notice required herein shall be in Spanish if the trustor requested a Spanish language translation of the contract or agreement pursuant to Section 1632. If the obligation secured by the deed of trust or mortgage is contained in a home improvement contract, as defined in Sections 7151.2 and 7159 of the Business and Professions Code, which is subject to Title 2 (commencing with Section 1801), the seller shall specify on the contract whether or not the contract was principally negotiated in Spanish and if the contract was principally negotiated in Spanish, the notice required herein shall be in Spanish. No assignee of the contract or person authorized to record the notice of default shall incur any obligation or liability for failing to mail a notice in Spanish unless Spanish is specified in the contract or the assignee or person has actual knowledge that the secured obligation was principally negotiated in Spanish. Unless specified in writing to the contrary, a copy of the notice required by subdivision (c) of Section 2924b shall be in English.

(2) Any failure to comply with the provisions of this subdivision shall not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

(c) Costs and expenses which may be charged pursuant to Sections 2924 to 2924i, inclusive, shall be limited to the costs incurred for recording, mailing, including certified and express mail charges, publishing, and posting notices required by Sections 2924 to 2924i, inclusive, postponement pursuant to Section 2924g not to exceed fifty dollars (\$50) per postponement and a fee for a trustee's sale guarantee or, in the event of judicial foreclosure, a litigation guarantee. For purposes of this subdivision, a trustee or beneficiary may purchase a trustee's sale guarantee at a rate meeting the standards contained in Sections 12401.1 and 12401.3 of the Insurance Code.

(d) Trustee's or attorney's fees which may be charged pursuant to subdivision (a), or until the notice of sale is deposited in the mail to the trustor as provided in Section 2924b, if the sale is by power of sale contained in the deed of trust or mortgage, or, otherwise at any time prior to the decree of foreclosure, are hereby authorized to be in an amount which does not exceed ~~two hundred forty dollars (\$240)~~ \_\_\_\_\_ dollars (\$\_\_\_\_) with respect to any portion of the unpaid principal sum secured which is fifty thousand dollars (\$50,000) or less, plus one-half of 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars (\$50,000) up to and including one hundred fifty thousand dollars (\$150,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars (\$150,000) up to and including five hundred thousand dollars (\$500,000), plus one-eighth of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars (\$500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where the charge does not exceed the amounts authorized herein. For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded.

(e) Reinstatement of a monetary default under the terms of an obligation secured by a deed of trust, or mortgage may be made at any time within the period commencing with the date of

1 recordation of the notice of default until five business days prior  
2 to the date of sale set forth in the initial recorded notice of sale.

3 In the event the sale does not take place on the date set forth in  
4 the initial recorded notice of sale or a subsequent recorded notice  
5 of sale is required to be given, the right of reinstatement shall be  
6 revived as of the date of recordation of the subsequent notice of  
7 sale, and shall continue from that date until five business days prior  
8 to the date of sale set forth in the subsequently recorded notice of  
9 sale.

10 In the event the date of sale is postponed on the date of sale set  
11 forth in either an initial or any subsequent notice of sale, or is  
12 postponed on the date declared for sale at an immediately  
13 preceding postponement of sale, and, the postponement is for a  
14 period which exceeds five business days from the date set forth in  
15 the notice of sale, or declared at the time of postponement, then the  
16 right of reinstatement is revived as of the date of postponement and  
17 shall continue from that date until five business days prior to the  
18 date of sale declared at the time of the postponement.

19 Nothing contained herein shall give rise to a right of  
20 reinstatement during the period of five business days prior to the  
21 date of sale, whether the date of sale is noticed in a notice of sale  
22 or declared at a postponement of sale.

23 Pursuant to the terms of this subdivision, no beneficiary, trustee,  
24 mortgagee, or their agents or successors shall be liable in any  
25 manner to a trustor, mortgagor, their agents or successors or any  
26 beneficiary under a subordinate deed of trust or mortgage or any  
27 other person having a subordinate lien or encumbrance of record  
28 thereon for the failure to allow a reinstatement of the obligation  
29 secured by a deed of trust or mortgage during the period of five  
30 business days prior to the sale of the security property, and no such  
31 right of reinstatement during this period is created by this section.  
32 Any right of reinstatement created by this section is terminated  
33 five business days prior to the date of sale set forth in the initial date  
34 of sale, and is revived only as prescribed herein and only as of the  
35 date set forth herein.

36 As used in this subdivision, the term “business day” has the  
37 same meaning as specified in Section 9.

38 SEC. 2. Section 2924d of the Civil Code is amended to read:

39 2924d. (a) Commencing with the date that the notice of sale  
40 is deposited in the mail, as provided in Section 2924b, and until the



1 property is sold pursuant to the power of sale contained in the  
2 mortgage or deed of trust, a beneficiary, trustee, mortgagee, or his  
3 or her agent or successor in interest, may demand and receive from  
4 a trustor, mortgagor, or his or her agent or successor in interest, or  
5 any beneficiary under a subordinate deed of trust, or any other  
6 person having a subordinate lien or encumbrance of record those  
7 reasonable costs and expenses, to the extent allowed by  
8 subdivision (c) of Section 2924c, which are actually incurred in  
9 enforcing the terms of the obligation and trustee's or attorney's  
10 fees which are hereby authorized to be in an amount which does  
11 not exceed ~~three hundred fifty dollars (\$350)~~ \_\_\_\_\_ dollars (\$\_\_\_\_)  
12 with respect to any portion of the unpaid principal sum secured  
13 which is fifty thousand dollars (\$50,000) or less, plus 1 percent of  
14 any portion of the unpaid principal sum secured exceeding fifty  
15 thousand dollars (\$50,000) up to and including one hundred fifty  
16 thousand dollars (\$150,000), plus one-half of 1 percent of any  
17 portion of the unpaid principal sum secured exceeding one  
18 hundred fifty thousand dollars (\$150,000) up to and including five  
19 hundred thousand dollars (\$500,000), plus one-quarter of 1  
20 percent of any portion of the unpaid principal sum secured  
21 exceeding five hundred thousand dollars (\$500,000). For purposes  
22 of this subdivision, the unpaid principal sum secured shall be  
23 determined as of the date the notice of default is recorded. Any  
24 charge for trustee's or attorney's fees authorized by this  
25 subdivision shall be conclusively presumed to be lawful and valid  
26 where that charge does not exceed the amounts authorized herein.  
27 Any charge for trustee's or attorney's fees made pursuant to this  
28 subdivision shall be in lieu of and not in addition to those charges  
29 authorized by subdivision (d) of Section 2924c.

30 (b) Upon the sale of property pursuant to a power of sale, a  
31 trustee, or his or her agent or successor in interest, may demand and  
32 receive from a beneficiary, or his or her agent or successor in  
33 interest, or may deduct from the proceeds of the sale, those  
34 reasonable costs and expenses, to the extent allowed by  
35 subdivision (c) of Section 2924c, which are actually incurred in  
36 enforcing the terms of the obligation and trustee's or attorney's  
37 fees which are hereby authorized to be in an amount which does  
38 not exceed three hundred fifty dollars (\$350) or one percent of the  
39 unpaid principal sum secured, whichever is greater. For purposes  
40 of this subdivision, the unpaid principal sum secured shall be





1 determined as of the date the notice of default is recorded. Any  
2 charge for trustee's or attorney's fees authorized by this  
3 subdivision shall be conclusively presumed to be lawful and valid  
4 where that charge does not exceed the amount authorized herein.  
5 Any charges for trustee's or attorney's fees made pursuant to this  
6 subdivision shall be in lieu of and not in addition to those charges  
7 authorized by subdivision (a) of this section and subdivision (d) of  
8 Section 2924c.

9 (c) (1) No person shall pay or offer to pay or collect any rebate  
10 or kickback for the referral of business involving the performance  
11 of any act required by this article.

12 (2) Any person who violates this subdivision shall be liable to  
13 the trustor for three times the amount of any rebate or kickback,  
14 plus reasonable attorney's fees and costs, in addition to any other  
15 remedies provided by law.

16 (3) No violation of this subdivision shall affect the validity of  
17 a sale in favor of a bona fide purchaser or the rights of an  
18 encumbrancer for value without notice.

19 (d) It shall not be unlawful for a trustee to pay or offer to pay  
20 a fee to an agent or subagent of the trustee for work performed by  
21 the agent or subagent in discharging the trustee's obligations under  
22 the terms of the deed of trust. Any payment of a fee by a trustee  
23 to an agent or subagent of the trustee for work performed by the  
24 agent or subagent in discharging the trustee's obligations under the  
25 terms of the deed of trust shall be conclusively presumed to be  
26 lawful and valid if the fee, when combined with other fees of the  
27 trustee, does not exceed in the aggregate the trustee's fee  
28 authorized by subdivision (d) of Section 2924c or subdivision (a)  
29 or (b) of this section.

30 (e) When a court issues a decree of foreclosure, it shall have  
31 discretion to award attorney's fees, costs, and expenses as are  
32 reasonable, if provided for in the note, deed of trust, or mortgage,  
33 pursuant to Section 580c of the Code of Civil Procedure.

